

City of Brisbane
Memo

To: Honorable Mayor and City Council

From: Ingrid Padilla, City Clerk

Subject: Ordinance No. 625- (Zoning Text Amendment RZ-1-18))- to amend Zoning Text to eliminate the prohibition of cannabis businesses within 600 feet of a school or daycare for properties located within zoning districts where such uses are permitted

Date: City Council Meeting of April 5, 2018

The Ordinance listed above was introduced at the City Council Meeting of March 15, 2018. No changes were made at the time.

It is on this meeting agenda for consideration of adoption.

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Proposed Ordinance No. 625 (Zoning Text Amendment RZ-1-18) - Zoning Text amendments to eliminate the prohibition of cannabis businesses within 600 feet of a school or daycare for properties located within zoning districts where such uses are permitted

DATE: March 15, 2018

City Council Goals:

To promote economic development that stabilizes and diversifies the tax base. (#4)

Purpose:

To eliminate the 600-foot buffer requirement for cannabis businesses from schools and daycares.

Recommendation:

That the City Council introduce Ordinance No. 625.

Background:

In September 2017, the City Council adopted Ordinance 617 to regulate certain types of cannabis-related businesses within the City, subject to certain performance standards and permitting processes as detailed in the Ordinance. One such requirement is that new cannabis businesses are prohibited to be established within 600 feet of a school or daycare.

Subsequently to the Ordinance's adoption, a prospective cannabis business interested in locating in Brisbane noted that the 600-foot buffer requirement represents a significant business constraint by restricting allowable locations in an industrial market (Crocker Park) with limited vacancy rates. At its January 4, 2018, meeting, the City Council directed staff to draft zoning text amendments to eliminate the buffer requirement as it pertains to Crocker Park. The Council's determination was primarily based on the lack of pedestrian connectivity between Lipman School and sites within the Crocker Industrial Park, as well as the fact that any Conditional Use Permit (CUP) applications for cannabis businesses would consider site and business-specific factors pertaining to public safety and welfare.

Consistent with the Council's direction, the Planning Commission considered zoning text amendments that would eliminate the 600-foot buffer from schools and daycares at their January 23, 2018 meeting. The Commission voted 3-0 (Anderson abstaining) to recommend Council approval of the text amendments. The Planning Commission Resolution RZ-1-18 is attached for the Council's reference.

Discussion:

The draft zoning text amendments would eliminate the 600-foot buffer entirely by deleting subsection 17.33.020.A. The only school and daycare within 600 feet of commercial districts where cannabis-related businesses are allowed or conditionally allowed are Lipman Middle School and Silverspot Co-op. Other existing schools and daycare facilities are within residential districts where no cannabis businesses are allowed. Additionally, there are no existing or proposed new schools or daycares anywhere within 600 feet of commercial districts where cannabis-related businesses are allowed or conditionally allowed. Hence, the buffer only impacts the TC-1 Crocker Park District.

Cannabis labs/testing business are permitted in the SCRO-1, Southwest Bayshore and SP-CRO, Sierra Point districts. While these businesses are not defined as "cannabis businesses" by the Zoning Ordinance, they are subject to the standards of Chapter 17.33, including the locational requirements. While it's possible that in the future daycares could be potentially established in the SCRO-1 (large family daycare in single-family home, CUP required), or SP-CRO (CUP required) districts within 600 feet of a permitted cannabis testing lab in those districts, the Planning Commission would be able to consider compatibility of the proposed daycare use with adjacent uses as part of the CUP application. There are currently no licensed daycares within either of these districts.

Considering its exclusive impact on businesses in Crocker Park, where cannabis businesses are otherwise allowed with approval of a CUP, and limited potential for impacts in any other commercial districts, elimination of the 600-foot buffer is recommended.

Fiscal Impact:

None.

Measure of Success:


Adoption of Ordinance 625 will eliminate barriers to the establishment of cannabis businesses in zoning districts in which they are permitted or conditionally permitted uses.

Attachments:

1. Draft Ordinance No. 625 redlined text
2. Draft Ordinance No. 625
3. Planning Commission Resolution RZ-1-18 (without attachments)
4. Planning Commission agenda report and minutes from January 23, 2018 meeting



John Swiecki, Community Development Director



Clay Holstine, City Manager

Ordinance 625 (RZ-1-18) Proposed Amendments: Redline Text

Black text = Existing Municipal Code text

Blue underline text = Proposed new Municipal Code text

~~Blue strikethrough~~ = Proposed deleted Municipal Code text

Chapter 17.33 - CANNABIS BUSINESSES

17.33.020 - Performance standards for cannabis businesses.

All cannabis businesses and research and development businesses involving cannabis must comply with all of the operating standards contained in this section, subject to review and determination by the police chief.

~~A. Location Limitations. A cannabis business or research and development business involving cannabis may not be located within six hundred (600) feet of a school, day care, or youth center, as those terms are defined in Section 26054 of the California Business and Professions Code, as may be amended.~~

A B. State license and Accreditation. Beginning at such a time that the State has begun to issue licenses and at all times thereafter, cannabis businesses shall hold a valid state license for the equivalent state license type. Research and development testing laboratories for cannabis must hold a valid certificate of accreditation from the State of California per the requirements of Section 26100 of the California Business and Professions Code, as may be amended from time to time.

B C. Hours of Operation. All cannabis businesses shall be closed to the general public. Deliveries and pick-ups shall be prohibited between the hours of seven (7:00) p.m. and eight (8:00) a.m.

C D. Odor Control. Odors shall be contained on the property on which the business is located. If the city receives any odor complaints, permittees shall work with the building official to correct odor concerns. Unresolved or repeated odor complaints may be the basis for suspension or revocation of the business license or use permit, as applicable.

D E. Location of Business Activities. All aspects of the business, with the exception of incidental loading and off-loading of cannabis or cannabis products, shall occur within the building where the business is being conducted. No production, distribution, warehousing, display, or wholesale of cannabis products shall be visible from the exterior of the building.

E F. Security Measures. All operators shall maintain a commercial burglar alarm monitoring system, and install a video surveillance system. Additional security measures may be required by the police chief consistent with the requirements of Section 17.33.030(B)(8) of this chapter.

F G. Security Breach. All operators shall notify the Brisbane Police Department immediately after discovering any of the following:

1. Diversion, theft, loss, or any criminal activity involving the cannabis or any agent or employee of the business.

Attachment 1

2. The loss or unauthorized alteration of business records related to employees or agents of the business.
3. Significant discrepancies identified during inventory.
4. Any other breach of security.

G H. Labeling. Labels and packages of cannabis and cannabis products shall meet all state and federal labeling requirements.

H I. Inspections and Records. Inspections shall be scheduled by the police chief whenever deemed necessary by the police chief. Inspections shall take place at a reasonable time with prior notice to the business operator. Upon request, the business operator shall timely provide the police chief with records related to the business, including, but not limited to, utility bills from the commercial energy provider for the premises. This section shall not limit any inspection authorized under any other provision of law or regulation.

I J. Notification of Change in Ownership or Managerial Employee. All operators shall notify the Brisbane Police Department immediately upon a change in ownership or the hiring of new managerial employees. New business owners or managerial employees must provide all applicable information required by Section 17.33.030(B).

draft
ORDINANCE NO. 625

**AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING CHAPTER 17.33 OF TITLE 17, ZONING, OF
THE BRISBANE MUNICIPAL CODE
TO MODIFY CANNABIS BUSINESS REGULATIONS**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Section 17.33.020 of Chapter 17.33 – Cannabis Businesses of the Municipal Code is amended to read as follows:

17.33.020 - Performance standards for cannabis businesses.

All cannabis businesses and research and development businesses involving cannabis must comply with all of the operating standards contained in this section, subject to review and determination by the police chief.

A. State license and Accreditation. Beginning at such a time that the State has begun to issue licenses and at all times thereafter, cannabis businesses shall hold a valid state license for the equivalent state license type. Research and development testing laboratories for cannabis must hold a valid certificate of accreditation from the State of California per the requirements of Section 26100 of the California Business and Professions Code, as may be amended from time to time.

B. Hours of Operation. All cannabis businesses shall be closed to the general public. Deliveries and pick-ups shall be prohibited between the hours of seven (7:00) p.m. and eight (8:00) a.m.

C. Odor Control. Odors shall be contained on the property on which the business is located. If the city receives any odor complaints, permittees shall work with the building official to correct odor concerns. Unresolved or repeated odor complaints may be the basis for suspension or revocation of the business license or use permit, as applicable.

D. Location of Business Activities. All aspects of the business, with the exception of incidental loading and off-loading of cannabis or cannabis products, shall occur within the building where the business is being conducted. No production, distribution, warehousing, display, or wholesale of cannabis products shall be visible from the exterior of the building.

E. Security Measures. All operators shall maintain a commercial burglar alarm monitoring system, and install a video surveillance system. Additional security measures may be required by the police chief consistent with the requirements of Section 17.33.030(B)(8) of this chapter.

F. Security Breach. All operators shall notify the Brisbane Police Department immediately after discovering any of the following:

1. Diversion, theft, loss, or any criminal activity involving the cannabis or any agent or employee of the business.
2. The loss or unauthorized alteration of business records related to employees or agents of the business.

- 3. Significant discrepancies identified during inventory.
- 4. Any other breach of security.

G. Labeling. Labels and packages of cannabis and cannabis products shall meet all state and federal labeling requirements.

H. Inspections and Records. Inspections shall be scheduled by the police chief whenever deemed necessary by the police chief. Inspections shall take place at a reasonable time with prior notice to the business operator. Upon request, the business operator shall timely provide the police chief with records related to the business, including, but not limited to, utility bills from the commercial energy provider for the premises. This section shall not limit any inspection authorized under any other provision of law or regulation.

I. Notification of Change in Ownership or Managerial Employee. All operators shall notify the Brisbane Police Department immediately upon a change in ownership or the hiring of new managerial employees. New business owners or managerial employees must provide all applicable information required by Section 17.33.030(B).

SECTION 2: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 4: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2018, by the following vote:

AYES:
NOES:
ABSENT:ABSTAIN:

Mayor W. Clarke Conway

ATTEST:

City Clerk

APPROVED AS TO FORM:

A handwritten signature in blue ink that reads "Michael Paul". The signature is written in a cursive style with a large initial "M".

City Attorney

RESOLUTION NO. RZ-1-18

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE
RECOMMENDING APPROVAL OF ZONING TEXT AMENDMENT RZ-1-18
TO THE CITY COUNCIL
AMENDING CHAPTER 17.33 OF TITLE 17, ZONING OF THE BRISBANE MUNICIPAL
CODE
TO MODIFY CANNABIS BUSINESS REGULATIONS

WHEREAS, in September 2017, the City Council adopted Ordinance 617 amending Title 17, Zoning of the Brisbane Municipal Code to regulate certain cannabis-related businesses in the City of Brisbane, subject to location limitations and performance standards established in Chapter 17.33, such ordinance becoming effective in October 2017; and

WHEREAS, Chapter 17.33 includes a prohibition of any cannabis-related business within 600 feet of a school, daycare, or youth center, including within districts where such businesses would otherwise be allowed or conditionally allowed; and

WHEREAS, on January 4, 2018, subsequent to adoption of Ordinance 617 and based on feedback from the cannabis business community, the City Council determined that the 600-foot buffer requirement represents a significant business constraint by restricting allowable locations in Crocker Park, an industrial market with limited vacancy; and

WHEREAS, the City Council directed the Planning Commission to consider zoning text amendments to eliminate this constraint regarding the location of cannabis-related businesses in districts where such businesses would otherwise be allowed or conditionally allowed;

WHEREAS, on January 23rd, 2018, the Planning Commission held a public hearing on the draft Ordinance containing all above-referenced zoning text amendments, publicly noticed in compliance with Brisbane Municipal Code Chapters 1.12 and 17.54, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the minutes of the Planning Commission meeting of January 23rd, 2018 are attached and incorporated by reference as part of this resolution; and

WHEREAS, the project is consistent with the City's General Plan and per State CEQA Guidelines Section 15183(a)--this proposal falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review; and

WHEREAS, the exception to CEQA Guidelines Section 15183(a) requiring environmental review as might be necessary to examine project specific significant effects does not apply.


NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council adopt the attached ordinance.

AYES: Mackin, Munir, Sayasane

NOES: None

ABSENT: None

ABSTAIN: Anderson



Jameel Munir
Chairperson

ATTEST:



JOHN SWIECKI, Community Development Director

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 1/23/2018

FROM: Julia Capasso, Associate Planner, via John Swiecki, Community Development Director

SUBJECT: **Zoning Text Amendment RZ-1-18** for amendments to Chapter 17.33 of Title 17, Zoning, of the Brisbane Municipal Code to eliminate the prohibition of cannabis businesses within 600 feet of a school or daycare for properties located within the Crocker Industrial Park (TC-1 District) where such uses are conditionally permitted; City of Brisbane, applicant.

REQUEST: City Council-initiated zoning text amendments to eliminate location restrictions for new cannabis businesses in Crocker Park related to proximity to schools and daycares.

RECOMMENDATION: Recommend City Council approval of Zoning Text Amendment RZ-1-18 via adoption of Resolution RZ-1-18.

ENVIRONMENTAL DETERMINATION: The project is consistent with the General Plan per State CEQA Guidelines Section 15183(a)--this proposal falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review. The exception to this section requiring environmental review as might be necessary to examine project specific significant effects does not apply.

APPLICABLE REGULATIONS: The City's cannabis business regulations are contained in BMC Chapter 17.33. The SCRO-1, Southwest Bayshore Commercial District regulations are contained in BMC Chapter 17.16. The SP-CRO, Sierra Point Commercial District regulations are contained in BMC Chapter 17.18. The TC-1, Crocker Park Trade Commercial District regulations are contained in BMC Chapter 17.19.

BACKGROUND/DISCUSSION:

In September 2017 the City Council adopted Ordinance 617 amending various sections and chapters within Title 17, Zoning, to adopt regulations pertaining to certain medicinal and adult use cannabis businesses.

BMC Chapter 17.33, Cannabis Businesses, requires that new cannabis businesses be located more than 600 feet from schools, daycares, or youth centers. This 600-foot buffer is consistent with State Business and Professions Code Section 26054. However, State law allows local jurisdictions to specify a different radius, which could be greater or less than 600 feet. The method of measuring that distance is as specified in State Health and Safety Code Section 11362.768, from property line to property line.

As applied to existing schools, daycares, and youth centers in Brisbane, this 600-foot buffer includes several properties along Valley Drive within Crocker Park, a zoning district where certain cannabis businesses are allowed or conditionally allowed. No other zoning districts where cannabis businesses are conditionally allowed are impacted by this 600-foot buffer based on current schools, daycare, and youth center locations.

Subsequent to adoption of Ordinance 617, a prospective cannabis business interested in locating in Brisbane noted that the 600-foot buffer requirement represents a significant business constraint by restricting allowable locations in an industrial market (Crocker Park) with limited vacancy rates.

At its January 4, 2018, meeting, the City Council directed staff to draft zoning text amendments to eliminate the buffer requirement as it pertains to Crocker Park. The Council's determination was primarily based on the lack of pedestrian connectivity between Lipman School and sites within the Crocker Industrial Park, as well as the fact that any Conditional Use Permit (CUP) applications for cannabis businesses would consider site and business-specific factors pertaining to public safety and welfare.

Consistent with the Council's direction, staff has drafted zoning text amendments as detailed in the attached redline text and draft Resolution RZ-1-18, for the Commission's consideration.

Text Amendments

Chapter 17.33, Section 17.33.020

The proposed zoning text modifications would eliminate the 600-foot buffer entirely by deleting subsection 17.33.020.A. The only school and daycare within 600 feet of commercial districts where cannabis-related businesses are allowed or conditionally allowed are Lipman Middle School and Silverspot Co-op. Other existing schools and daycare facilities are within residential districts where no cannabis businesses are allowed. Additionally, there are no existing or proposed new schools or daycares anywhere within 600 feet of commercial districts where cannabis-related businesses are allowed or conditionally allowed. Hence, the buffer only impacts the TC-1 Crocker Park District.

Cannabis labs/testing business are permitted in the SCRO-1, Southwest Bayshore and SP-CRO, Sierra Point districts. While these businesses are not defined as "cannabis businesses" by the Zoning Ordinance, they are subject to the standards of Chapter 17.33, including the locational requirements. While it's possible that in the future daycares could be potentially established in the SCRO-1 (large family daycare in single-family home, CUP required), or SP-CRO (CUP required) districts within 600 feet of a permitted cannabis testing lab in those districts, the Planning Commission would be able to consider compatibility of the proposed daycare use with adjacent uses as part of the CUP application. There are currently no licensed daycares within either of these districts.

Considering its exclusive impact on businesses in Crocker Park, where cannabis businesses are otherwise allowed with approval of a CUP, and limited potential for impacts in any other commercial districts, elimination of the 600-foot buffer is recommended.

RZ-1-18
January 23, 2018 Meeting
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STAFF RECOMMENDATION

Adoption of the attached draft Resolution RZ-1-18 recommending approval of the proposed zoning text amendments to the City Council.

ATTACHMENTS:

- A. ~~Redlined text of proposed zoning text amendments~~
- B. ~~Draft Resolution RZ-1-18 (including the draft ordinance)~~

BRISBANE PLANNING COMMISSION
Action Minutes of January 23, 2018
Regular Meeting

A. CALL TO ORDER

Chairperson Munir called the meeting to order at 7:30 p.m.

B. ROLL CALL

Present: Commissioners Anderson, Mackin, Munir, and Sayasane.

Absent: None.

Staff Present: Community Development Director Swiecki, Senior Planner Johnson and Associate Planner Capasso.

C. ADOPTION OF AGENDA

Commissioner Mackin moved to adopt the agenda with modifications to hear New Business Item G.2 (Zoning Text Amendment RZ-1-18) before New Business Item G.1 (99 Thomas Avenue planning applications). Commissioner Sayasane seconded the motion and it was approved 4-0.

D. CONSENT CALENDAR

1. APPROVAL OF DRAFT ACTION MINUTES

- i. January 9, 2018 regular meeting

Commissioner Anderson moved adoption of the consent calendar. Commissioner Mackin seconded the motion and it was approved 4-0.

E. ORAL COMMUNICATIONS (limit to a total of 15 minutes)

There were none.

F. WRITTEN COMMUNICATIONS

There were none.

G. NEW BUSINESS

1. **PUBLIC HEARING: Zoning Text Amendment RZ-1-18;** Zoning Text Amendments to Chapter 17.33 of Title 17, Zoning, of the Brisbane Municipal Code to eliminate the prohibition of cannabis businesses within 600 feet of a school or daycare for properties located within the Crocker Industrial Park (TC-1 District) where such uses are conditionally permitted. City of Brisbane, applicant.

Associate Planner Capasso gave the staff presentation.

Chairperson Munir opened the public hearing. Seeing nobody wishing to speak, Commissioner Mackin moved to close the public hearing. The motion was seconded by Commissioner Anderson and approved 4-0.

Commissioner Mackin moved adoption of Resolution RZ-1-18 recommending approval of the zoning text amendments to the City Council. Commissioner Sayasane seconded the motion and it was approved 3-0-1 (Anderson abstaining).

2. **PUBLIC HEARING: 99 Thomas Avenue; R-BA Brisbane Acres Residential District; Design Permit DP-2-16/Grading Permit EX-2-16/Habitat Conservation Plan Compliance Permit HCP-1-16;** Demolition and removal of an existing single-family residence and construction of a new approximately 4,949 square foot, 3-story, single-family residence and a 534 square foot detached garage (5,483 square feet total), with associated grading of approximately 1,411 cubic yards of cut and 652 cubic yards of fill on a 1.2 acre Brisbane Acres ridgeline lot and adoption of a Habitat Conservation Plan (HCP) Operating Program; Mark English, applicant; Andrew Kom and Xi Yan Ruan, owners; APN 007-350-170.

Commissioner Anderson recused himself since he owns property within 500 feet of the subject property.

Senior Planner Johnson gave the staff presentation. He answered Commission questions regarding hazardous materials abatement related to demolition of the existing home, the outdoor kitchen location relative to the driveway, grinding of trees and construction debris (wood scraps) on site, the irrigation water source, the geotechnical aspects of the project and solar power and green building requirements.

Mark English, the applicant and architect, Ive Haugeland, landscape architect, and David Hoexter, engineering geologist, spoke in support of the project.

Andrew Kom and Xi Yan Ruan, property owners, spoke in support of the project.

Dennis Busse, Brisbane resident, asked that abandoned cars in the vicinity of the subject property be cleaned up.

Seeing no additional audience members wishing to speak, Commissioner Mackin moved to close the public hearing. The motion was seconded by Commissioner Sayasane and approved 3-0.

Following deliberations the Commission agreed to modify the conditions of approval to: provide for relocation of the outdoor kitchen subject to the Community Development Director approval, prohibit on-site grinding of large tree trunks and limbs and building materials, require the project to incorporate trees that will be large at maturity into the landscape plan to provide habitat for raptors and require exterior lighting to be downlit.

Chairperson Munir moved approval of the project via adoption of Resolution DP-2-16/EX-2-16/HCP-1-16 subject to the revisions noted above. Commissioner Sayasane seconded the motion and it was approved 3-0.

H. ITEMS INITIATED BY STAFF

Director Swiecki asked Commissioners interested in attending the Planning Commissioners Academy in April to contact staff to register. He announced the City Council requested fiscal analysis of development scenarios in the Baylands including certain levels of residential development.